IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3986 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANCHSHEEL MERCANTILE CO.OP. BANK LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3986 of 2000

MR DR DHIMAR for Petitioners No. 1-6

MR VM PANCHOLI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR NAGIN N GANDHI for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/12/2001

ORAL JUDGEMENT

The petitioners herein seek quashment of

complaint by respondent No.2 and the order passed thereunder issuing process by learned JMFC, Surat in Criminal Case No. 978 of 2000 before JMFC, Surat, on 2.5.2000.

2. The facts leading to the complaint can be stated in brief thus:

2.1 The petitioner No.1 is a Co-operative Bank and rest of the petitioners are office bearers of the said Bank. Respondent No.2, the complainant is engaged in financing. He had deposited an amount of Rs. 50 lakh with the petitioner No.1 Bank in form of two Fixed Deposits of Rs. 25 lakhs each, against that deposit he had obtained an over-draft facility upto Rs. 40 lakhs. On the basis of this arrangement, banking transactions were carried out at both the ends.

2.3 According to the complainant, the Bank was supposed to give interest at the rate of 12.5 per cent per annum on the deposits and was supposed to charge an interest at the rate of 14.5 per cent per annum on the overdraft. He is aggrieved by debit of following two amounts:-

Sr. No. Entry Date Amount

1. 7.10.1996 Rs. 337/-
2. 7.10.1996 Rs. 4,11,154/-

The complainant was aggrieved by these two debit entries, as according to him the Bank was not supposed to charge anything beyond 14.5 per cent on the over-draft amount, whereas the Bank has charged more money and by debiting this amount the Bank has committed criminal breach of trust. The complainant has come with a case that he has deposited an amount of Rs. 4,96,566/- with the Bank in trust, which amount has been wrongly debited by the Bank and has thereby committed criminal breach of trust, and according to him this has been done by the petitioners by hatching a conspirary. Learned JMFC, after recording statement of respondent No.2, directed issuance of process for offences under Sections 409, 34 and 120B of IPC on the complainant providing witness list and paying process fees. The petitioners are aggrieved by this order and have approached this Court with this petition under Section 482 of Cr.P.C.

3. Learned Advocate Mr. D.R. Dhimar appearing for the petitioners contended that prima-facie case is not made out in the complaint to constitute offences under

Section 409 or 120B of IPC. The element of entrustment to constitute the offence of criminal breach of trust is totally missing. Likewise, there is not a word about conspiracy and therefore, learned Magistrate ought not to have taken cognizance and issue process in respect of these offences.

3.1 Mr. Dhimar contended that the transaction is purely of a civil nature; mens rea is absent. None of the office bearers of the Bank are going to be personally benefited by the debit entries in question and therefore, this petition may be allowed.

3.2 Mr. Dhimar contended further that the allegations made in the complaint regarding the transaction are vague, no specific allegation is made out against any of the petitioners and therefore the complaint may be quashed.

3.3 Giving certain factual details, Mr. Dhimar contended that petitioner No.2 was not the Manager at the relevant time. Likewise, he contended that the complainant - respondent No.2 had exceeded his over-draft limit and therefore interest at the rate applicable as per Reserve Bank of India guidelines was charged. The complainant has used the Bank's funds and in order to avoid payment of interest thereon, has resorted to this strategy of lodging a complaint.

3.4 Mr. Dhimar contended that the complainant has not approached this Court with clean hands. The complainant has approached District Consumer Redressal Forum at Surat and that application is still pending. This aspect he has deliberately not indicated in the complaint. He submitted that apart from the fact of suppression of this material, this aspect indicates that the dispute is of a purely civil nature, to which an attempt is made to give a criminal shade by lodging this complaint. Mr. Dhimar placed reliance on certain decisions of the apex Court.

4. Learned Advocate Mr. Gandhi appearing for respondent No.2 has opposed this petition. According to him, the petitioners have alternative remedy in form of an application praying for discharge before the learned Magistrate, who has only issued process. The petitioners are not convicted. This Court may not enter into the arena of considering the defence of the petitioners that the entry has been made against the exceeded limit of the over-draft. Mr. Gandhi submitted further that the Bank has wrongly debited the amount and has thereby committed

criminal breach of trust. In order to support his contention that the petitioners have an alternative remedy of praying for discharge and that therefore this Court may not exercise powers under Section 482 of Cr.P.C., he has relied on the decision in the case of Madhu Limaye Vs. State of Maharashtra, as reported in AIR 1978 S.C 47.

On the above grounds, Mr. Gandhi urged that the petition may be dismissed.

5. Mr. V.M. Pancholi, learned Additional Public Prosecutor appears for the State and opposes this petition.

6. Considering the contentions raised before this Court, it has to be observed at the out-set that both petitioner No.1 and respondent No.2 who represents Anchor Capital of India Ltd. are body corporates and both of them operate through their personnel. Element of personal gain therefore would be by and large absent.

7. There can be no dispute about the proposition suggested by learned Advocate Mr. Gandhi that this Court may not enter into the arena of evaluation of evidence at this stage while considering an application for quashment in exercise of powers under Section 482 of Cr.P.C. It is equally true to say that the defence of the accused in a complaint is not required to be considered at this stage. The Court has to examine the complaint as it is without adding or substracting anything from the complaint and to examine whether the ingredients of the offences alleged in the complaint are indicated therefrom or not. If the ingredients are indicated, the Court may interfere and if they are not indicated, the Court may not interfere. With the above proposition now the facts of the present case will have to be examined.

8. On a plain reading of the complaint, it is amply clear that except one sentence in the last paragraph alleging that the amount has been debited by the accused persons in conspiracy of each other, there is not a word to indicate presence of any conspiracy. The entire complaint is silent about the role played by all or any of petitioners Nos. 2 to 6 in the transaction and therefore, unhesitatingly it has to be held that offence punishable under Section 120B of IPC is not made out in the complaint itself. The learned Magistrate ought not to have issued process for this offence.

9. So far as the other offence, namely - criminal

breach of trust by a Bank punishable under Section 409 of IPC is concerned, the complainant has come with a specific case that he had deposited an amount of Rs. 4,96,566/- in trust with petitioner Bank and that amount of Rs. 4,96,566/- has been debited by the petitioners and thereby criminal breach of trust is committed by them. In paragraph 7 what is stated is that Rs. 4,96,566/- has been debited from the account without any instruction of the complainant. Statement of transactions of the complainant prepared by the Bank for a period from 1.10.96 to 15.10.96 was received by the complainant. He has raised no dispute about any of the entries except the entries for Rs. 337/- and Rs. 4,11,154/- as stated above. Copy of the said statement is at Annexure "C". The statement indicates that consistently from 5.10.96 till the disputed entries dated 7.10.96 there was debit balance and there are debit entries only. There is nothing to indicate that as to when and by which cheque amount of Rs. 4,96,566/- was deposited by the complainant with the petitioner Bank in trust as alleged by him and by which entry the said amount of Rs. 4,96,566/- has been debited by the petitioner Bank, because the disputed entries total to Rs. 4,11,154/- only. The element of entrustment of property is required to be proved for justifying breach of trust. He has therefore not properly indicated it in the complaint and in that factual situation, the complaint deserves to be quashed as the offence is not made out. The complaint itself is self-contradictory and does not constitute an offence punishable under Section 409 of IPC. Learned Magistrate therefore ought not to have issued process for the said offence as well.

10. The petition therefore deserves to be allowed. However, before parting, it would be appropriate to note that the disputed transactions are of 7.10.1996. The statement was received by the complainant in the month of Nov. 1996. On the basis of this statement, a complaint with the District Consumer Redressal Forum was lodged in year 1997 and after a long lapse of about 3 to 4 years present complaint was filed on 2.5.2000. This indicates that the complainant has tried to use the criminal justice system as a leverage against the Bank. This is therefore an abuse of process of Court and this Court is therefore inclined to exercise its inherent power under Section 482 of Cr.P.C.

11. The petition is therefore allowed. Complaint lodged by respondent No.2, which is registered as Criminal Case No. 978 of 2000 before the Court of learned Judicial Magistrate First Class, Surat and the

order passed thereunder issuing process by the learned JMFC, on 2.5.2000 are hereby quashed.

Rule is made absolute.

(A.L.Dave, J.)

*/Mohandas